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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that mentally disabled  
2 persons need additional protection from sexual predators. Among  
3 adults who are developmentally disabled, as many as eighty-three  
4 per cent of the females and thirty-two per cent of the males are  
5 victims of sexual assault. Further, anywhere from fifteen  
6 thousand to nineteen thousand people with developmental  
7 disabilities are sexually assaulted each year in the United  
8 States. Forty per cent of people with developmental  
9 disabilities who are victims of sexual violence will experience  
10 ten or more abusive incidents.

11       The legislature further finds that mentally disabled  
12 persons and developmentally disabled persons have limited, if  
13 any, capacity to give knowing and willing consent to sexual  
14 acts. This inability to consent closely parallels the inability  
15 of certain minors and prison inmates to consent.

16       In *State v. Buch*, 83 Hawaii 308, 926 P2d. 599 (1996), the  
17 Hawaii supreme court, citing the Michigan supreme court in



1 *People v. Cash*, 419 Mich. 230, 351 N.W.2d 822 (1984), stated  
2 that:

3 "It is well-established that the Legislature may, pursuant  
4 to its police powers, define criminal offenses without  
5 requiring proof of a specific criminal intent and so  
6 provide that the perpetrator proceed at his [or her] own  
7 peril regardless of his [or her] defense of ignorance or of  
8 an honest mistake of fact. In the case of statutory rape,  
9 such legislation, in the nature of 'strict liability'  
10 offenses, has been upheld as a matter of public policy  
11 because of the need to protect children[.]"

12 Just as the legislature in the past extended protection  
13 against sexual assault to minors under a certain age, the  
14 legislature finds a similar need to extend protection to  
15 mentally disabled persons who similarly lack the capacity to  
16 consent to sexual acts. The purpose of this Act is to hold  
17 perpetrators strictly liable for sexual assault against persons  
18 who are mentally defective.

19 SECTION 2. Section 707-730, Hawaii Revised Statutes, is  
20 amended by amending subsection (1) to read as follows:

21 "(1) A person commits the offense of sexual assault in the  
22 first degree if:



1 (a) The person knowingly subjects another person to an act  
2 of sexual penetration by strong compulsion;

3 (b) The person knowingly engages in sexual penetration  
4 with another person who is less than fourteen years  
5 old;

6 (c) The person knowingly engages in sexual penetration  
7 with a person who is at least fourteen years old but  
8 less than sixteen years old; provided that:

9 (i) The person is not less than five years older than  
10 the minor; and

11 (ii) The person is not legally married to the minor;

12 (d) The person [~~knowingly~~] subjects to sexual penetration  
13 another person who is mentally defective; provided  
14 that it shall be an affirmative defense in a  
15 prosecution under this subsection that the person did  
16 not know that the other person was mentally defective;  
17 or

18 (e) The person knowingly subjects to sexual penetration  
19 another person who is mentally incapacitated or  
20 physically helpless as a result of the influence of a  
21 substance that the actor knowingly caused to be



1 administered to the other person without the other  
2 person's consent.

3 Paragraphs (b) and (c) shall not be construed to prohibit  
4 practitioners licensed under chapter 453, 455, or 460, from  
5 performing any act within their respective practices."

6 SECTION 3. Section 707-732, Hawaii Revised Statutes, is  
7 amended by amending subsection (1) to read as follows:

8 "(1) A person commits the offense of sexual assault in the  
9 third degree if:

10 (a) The person recklessly subjects another person to an  
11 act of sexual penetration by compulsion;

12 (b) The person knowingly subjects to sexual contact  
13 another person who is less than fourteen years old or  
14 causes such a person to have sexual contact with the  
15 person;

16 (c) The person knowingly engages in sexual contact with a  
17 person who is at least fourteen years old but less  
18 than sixteen years old or causes the minor to have  
19 sexual contact with the person; provided that:

20 (i) The person is not less than five years older than  
21 the minor; and

22 (ii) The person is not legally married to the minor;



1 (d) The person knowingly subjects to sexual contact  
2 another person who is [~~mentally defective,~~] mentally  
3 incapacitated[~~7~~] or physically helpless, or causes  
4 such a person to have sexual contact with the actor;

5 (e) The person subjects to sexual contact another person  
6 who is mentally defective, or causes a person who is  
7 mentally defective to have sexual contact with the  
8 actor; provided that it shall be an affirmative  
9 defense in a prosecution under this subsection that  
10 the person did not know that the other person was  
11 mentally defective;

12 [~~(e)~~] (f) The person, while employed:

13 (i) In a state correctional facility;

14 (ii) By a private company providing services at a  
15 correctional facility;

16 (iii) By a private company providing community-based  
17 residential services to persons committed to the  
18 director of public safety and having received  
19 notice of this statute;

20 (iv) By a private correctional facility operating in  
21 the State [~~of Hawaii~~]; or



1 (v) As a law enforcement officer as defined in  
2 section 710-1000(13),  
3 knowingly subjects to sexual contact an imprisoned  
4 person, a person confined to a detention facility, a  
5 person committed to the director of public safety, a  
6 person residing in a private correctional facility  
7 operating in the State [~~of Hawaii~~], or a person in  
8 custody, or causes the person to have sexual contact  
9 with the actor; or

10 [~~(f)~~] (g) The person knowingly, by strong compulsion, has  
11 sexual contact with another person or causes another  
12 person to have sexual contact with the actor.

13 Paragraphs (b), (c), (d), [~~and~~] (e), and (f) shall not be  
14 construed to prohibit practitioners licensed under chapter 453,  
15 455, or 460, from performing any act within their respective  
16 practices; provided further that paragraph [~~(e)-(v)~~] (f)(v) shall  
17 not be construed to prohibit a law enforcement officer from  
18 performing a lawful search pursuant to a warrant or an exception  
19 to the warrant clause."

20 SECTION 4. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun, before its effective date.



- 1       SECTION 5. Statutory material to be repealed is bracketed
- 2 and stricken. New statutory material is underscored.
- 3       SECTION 6. This Act shall take effect upon its approval.



S.B. NO. 2363  
S.D. 2  
H.D. 1  
C.D. 1

**Report Title:**

Sexual Assault; Mentally Defective; Strict Liability;  
Affirmative Defense

**Description:**

Amends Hawaii Penal Code to make sexual assault against a person who is mentally defective a "strict liability" offense; provided that lack of knowledge that the other person was mentally defective is an affirmative defense in a prosecution. (CD1)

